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Letter dated 28 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Burundi, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for the text of this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

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Annex

Letter dated 27 December 2001 from the Permanent Representative of Burundi to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to transmit to you the report (see enclosure) of the Government of Burundi prepared pursuant to paragraph 6 of Security Council resolution 1373 (2001).

You will also find appended hereto two preambles and two draft presidential decrees (see appendix) which are shortly to be signed by the country's highest authorities:

- Draft decree establishing a National Commission to Combat International Terrorism;
- Preamble to this decree;
- Draft decree prohibiting the financing of terrorism and the facilitation of acts of international terrorism;
- Preamble to this decree.

(*Signed*) Marc **Nteturuye**
Ambassador
Permanent Representative

Enclosure

Report of the Government of the Republic of Burundi, submitted to the Security Council Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)

Like the other members of the international community, Burundi was deeply shocked by the tragic attacks of 11 September 2001. It welcomed the Security Council's swift reaction in adopting resolution 1373 (2001) in order to prevent such barbaric acts and atrocities from ever happening again and to ensure that their perpetrators are severely punished.

Burundi is firmly resolved to cooperate with the United Nations, its Member States and, in particular, the Security Council Counter-Terrorism Committee in combating international terrorism by fully implementing resolution 1373 (2001) and all other resolutions and recommendations against international terrorism.

To this end, Burundi has already taken the measures which are described in this report following the questionnaire prepared as guidance for the submission of reports to the Security Council Committee.

Paragraph 1

Subparagraph (a) — What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1 (b) and (d)?

A draft decree prohibiting the financing of terrorism and the facilitation of acts of international terrorism has been drafted and will be considered by the Council of Ministers at its next meeting, on its return from the end-of-year recess. This draft constitutes a provisional statutory measure pending the adoption of a counter-terrorism law, the constitutional process for the adoption of laws usually being very lengthy.

In addition to this draft decree, the Burundi Penal Code (Decree Law No. 1/006 of 4 April 1981) already prohibits the activities of criminal gangs organized for the purpose of killing, looting or destroying public or private property, socio-economic infrastructure, the environment, cultural property, etc., acts which are similar to terrorist acts without actually being qualified as such (articles 417, 419 et seq. of the Penal Code, Book II).

Subparagraph (b) — What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

The activities constituting offences under the aforementioned draft decree are as follows:

1. Organization of terrorist groups (article 2, paragraph 1, and articles 3, 4 and 5 of the draft decree);

2. Collection of funds and other financial assets with the intention that they should be used to prepare or carry out terrorist acts (article 2, paragraph 3, articles 3, 4 and 5 of the draft decree);

3. Provision of funds or financial assets to any of the following persons or entities:

(a) Any person who may, with good reason, be suspected of preparing or carrying out an offence referred to in articles 1 and 2 of the aforementioned draft decree;

(b) Any entity owned by the suspect or over which he or she has significant influence;

(c) Any person or entity acting on behalf of or at the direction of the suspect or entity referred to in paragraph (b) above (articles 3, 4 and 5 of the draft decree).

All these categories of offences are punishable by penal servitude for life. Analogous offences under the Penal Code are punishable by the death penalty (articles 417, 419 et seq. of the Penal Code, Book II).

Subparagraph (c) — What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

The draft decree provides, in article 4, paragraphs 1 and 2, that:

> "When a person is suspected, with good reason, of preparing or carrying out an act referred to in articles 1 and 2, the Public Prosecutor's Office shall take the necessary measures to freeze without delay all property belonging to:
>
> (a) The suspect;
>
> (b) Any entity owned by the suspect or over which he or she has significant influence; or
>
> (c) Any person acting on behalf of or at the direction of the suspect or entity referred to in paragraph (b) above."

Any financial institution which suspects that a transaction is linked to an act referred to in articles 1 or 2 automatically transmits all information likely to expose this offence to the Public Prosecutor's Office. The financial institution must, at the request of the Public Prosecutor's Office, provide all useful information concerning the suspected offence. It does not inform any client or third person that such information has been transmitted. The officials of the financial institution are also subject to the obligation of confidentiality.

Examples of measures taken by the Government

The Government has already conducted checks in the country's financial and banking institutions with a view to identifying individuals, entities and bank accounts indicated in the new consolidated list prepared pursuant to Security Council resolutions 1267 (1999) and 1333 (2000).

Thus far, the Government has uncovered no evidence of those individuals and entities or of bank accounts belonging to the networks of the Taliban, Osama bin Laden or al-Qa'idah.

Subparagraph (d) — What measures exist to prohibit the activities listed in this subparagraph?

The measures taken to prohibit terrorist activities are as follows:

- Establishment of a National Commission to Combat International Terrorism under the chairmanship of the Minister of the Interior and Public Security;
- Checks conducted in the immigration services and financial institutions to establish the existence of individuals, entities, assets or property belonging to terrorist networks;
- Strengthening of security measures at airports and borders;
- Institution of systematic searches of baggage and passengers at airports;
- Designation of the Focal Point for the Security Council Committee.

Paragraph 2

Subparagraph (a) — What legislation or other measures are in place to give effect to this subparagraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

The Government has prepared a draft decree prohibiting the financing and facilitation of international terrorism in order to give effect to this subparagraph (articles 2, 3, 4 and 5 of the draft decree). In addition, the Penal Code already prohibits these offences. The draft decree will subsequently be elevated to the status of a law, once the lengthy constitutional process for the adoption of laws has been completed.

In prohibiting recruitment to terrorist groups and the supply of weapons to terrorists, the draft decree makes perpetrators liable to penal servitude for life (articles 3, 4 and 5). In addition, the Penal Code prohibits the formation of armed gangs (articles 417, 419 et seq. of the Penal Code, Book II). Terrorist groups may in fact begin organizing as armed gangs.

The import, acquisition and bearing of firearms are regulated by the Decree of 21 February 1950 enacting rules governing firearms and ammunition and general enforcement measures.

Subparagraph (b) — What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other States?

The Office of the Superintendent of the Criminal Investigation Department of the Public Prosecutor's Office is cooperating with the International Criminal Police Organization (Interpol) in the exchange of information.

The National Commission to Combat International Terrorism is responsible for gathering data and information and bringing them to the attention of the Government and the Focal Point, who exchanges them with the Security Council Committee and other countries.

Subparagraph (d) — What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

Burundi strictly observes the Charter of the United Nations and other rules of international law categorically prohibiting the use of the territory of one State as a base for terrorist groups that are destabilizing the territory of another State.

There are also agreements on mutual judicial assistance and extradition between Burundi and its neighbours to ensure that terrorist criminals do not evade punishment simply by moving to a neighbouring country (for instance, the Judicial Convention between Burundi, the Democratic Republic of the Congo and Rwanda, signed on 21 June 1975; the Convention between Burundi and the United Republic of Tanzania on Extradition and Mutual Judicial Assistance in Criminal Matters, which was signed on 27 April 1988 but has yet to be ratified; draft conventions on judicial cooperation and extradition between Burundi and the Russian Federation, Burundi and Uganda, Burundi and Zambia, and Burundi and Namibia).

Subparagraph (e) — What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

The Burundi Penal Code establishes very severe penalties for participation in armed gangs, which may in fact turn out to be terrorist groups (articles 417, 419 et seq. of the Penal Code, Book II). Its provisions are fairly broad in scope. They prohibit all acts that constitute offences against the person, from murder to kidnapping to assassination. Clearly, appeal judges will regard acts categorized as "terrorist" acts as particularly aggravating circumstances.

The draft decree prohibiting the financing of terrorism and the facilitation of terrorist acts institutes the punishment of penal servitude for life in respect of terrorist acts.

Subparagraph (f) — What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.

The Government of Burundi is a member of Interpol. Accordingly, there is within the Office of the Superintendent of the Criminal Investigation Department of the Public Prosecutor's Office a unit responsible for gathering and exchanging information with Interpol.

Burundi also cooperates with other States through the following mechanisms, inter alia:

- United Nations organs, in particular the Security Council through the Counter-Terrorism Committee;
- The Organization of African Unity (OAU) Mechanism for Conflict Prevention, Management and Resolution in Africa;
- The United Nations Standing Advisory Committee on Security Questions in Central Africa;

- The United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI).

Subparagraph (g) — How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery?

There is a governmental organ, the Border and Aliens Police, which was established by Decree-Law No. 100/087 of 13 June 1997. This organ, which is under the authority of the Minister of the Interior and Public Security, is responsible for monitoring cross-border movements into and out of the country. Naturally, it cooperates with the other customs and security services.

The monitoring of cross-border movements, the procedures for the issuance of identity papers and travel documents and measures to prevent their forgery are governed by the following laws and regulations:

- Decree-Law No. 1/007 of 20 March 1989 regulating the access of aliens to the territory of Burundi, their stay and establishment therein and their removal;
- Decree No. 100/026 of 30 January 1996 specifying measures for the enforcement of the Act of 1 August 1962 on the issuance of passports and equivalent documents;
- Ministerial Order No. 530/626 of 23 August 2000 specifying measures for the implementation of Decree No. 100/026 of 30 January 1996 on the issuance of passports and equivalent documents;
- Ministerial Order No. 530/038/96 of 1 February 1996 establishing the tariffs for passports and equivalent documents, travel documents, visas and identity cards for aliens;
- Ministerial Order No. 530/166 of 10 July 1989 establishing measures for the enforcement of Decree-Law No. 1/007 of 20 March 1989 regulating the access of aliens to the territory of Burundi, their stay and establishment therein and their removal.

Moreover, the Penal Code provides severe penalties for false entries in certain administrative documents, including the forgery of passports and other travel documents (articles 257 et seq. of the Penal Code, Book II).

Paragraph 3

Subparagraph (a) — What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?

Burundi is already cooperating in the exchange of operational information through Interpol. The establishment of a National Commission to Combat International Terrorism will strengthen this exchange of information.

Subparagraphs (b) and (c) — What steps have been taken to exchange information and to cooperate in the areas indicated in these subparagraphs?

Besides the mechanisms listed under paragraph 2, subparagraph (f), Burundi has signed the following international legal instruments concerning international terrorism through which it is able to cooperate and exchange information with other States:

- International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999. Burundi signed the Convention on 13 November 2001;
- Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism. Burundi signed the Convention on 14 July 1999;
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, concluded at Montreal on 24 February 1988. Burundi signed the Protocol on 6 March 1992 and ratified it on 6 June 1998;
- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997. Burundi signed the Convention on 4 March 1998;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971. Burundi signed the Convention on 6 March 1972 and ratified it on 6 June 1998;
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970. Burundi signed the Convention on 17 February 1971 and ratified it on 6 June 1998;
- Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963. Burundi signed the Convention on 14 July 1971 and deposited its instrument of ratification with ICAO on 12 October 1971;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations in New York on 14 December 1973. Burundi acceded to the Convention on 17 December 1980.

In the context of administrative and judicial cooperation, Burundi has already signed a number of judicial assistance agreements (on extradition and judicial cooperation) with neighbouring countries (the Democratic Republic of the Congo, Rwanda, the United Republic of Tanzania) and plans to sign other such agreements with, inter alia, the Russian Federation, Uganda and Zambia.

Subparagraph (d) — What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph?

Burundi has already signed the International Convention for the Suppression of the Financing of Terrorism. It plans to accede to the other conventions which are no longer open for signature. The process of ratifying the International Convention for the Suppression of the Financing of Terrorism and of acceding to the other conventions relating to terrorism has already been initiated.

Subparagraph (e) — Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

The aforementioned draft decree is aimed specifically at the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

Other laws will be adopted, but they require a longer constitutional process for adoption.

Subparagraph (f) — What legislation, procedures and mechanisms are in place for ensuring that asylum-seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

The legislation and mechanisms in place are those referred to in the reply to paragraph 2, subparagraph (g).

Subparagraph (g) — What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists.

The Government of Burundi has increased its vigilance in the implementation of immigration laws and regulations. It will cooperate with the Office of the United Nations High Commissioner for Refugees in order to ensure, before granting refugee status, that applicants have not organized or facilitated the commission of acts of terrorism or participated in such acts.

Moreover, article 1, paragraph 2, of the aforementioned draft decree prohibits claims based on political motivation.

3.3. States may include in their reports additional relevant information, including information on the issues covered by paragraph 4 of resolution 1373 (2001). They may also include general observations on the implementation of the resolution and outline any problems encountered.

The fight against international terrorism is closely linked to transnational organized crime, including drug trafficking and money-laundering. Burundi is joining in efforts undertaken by the international community to combat all these scourges.

In order to do this, Burundi has established a drug control unit within the Office of the Superintendent of the Criminal Investigation Department of the Public Prosecutor's Office. It has created a financial and economic branch of the police. Moreover, it is participating in international forums on money-laundering, transnational organized crime and trafficking in arms and drugs. It is also a member of the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI).

Burundi has signed the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

4. Assistance

4.1. States may, if they wish, identify in their reports or separately inform the Committee of areas in which they require or would benefit from technical assistance or additional guidance in aspects covered by resolution 1373 (2001) or in preparing reports for the Committee under paragraph 6 of that resolution. The Committee will explore the capacity of States and international and regional organizations to offer such assistance. It intends to collate information on possible sources of assistance and will give careful consideration to how it can facilitate the provision of assistance in response to any such requests.

The Government of Burundi would like to receive comments from the Security Council Counter-Terrorism Committee and from other countries on its report and on its draft decree prohibiting the financing and facilitation of acts of terrorism. It would also like to be able to follow all the work on the steps to be taken to counter terrorism and to be informed of the efforts made by other countries.

Given its lack of know-how and skills in this area and its limited means, the Government will obviously encounter difficulties in implementing the resolutions and conventions against terrorism, especially in preparing national implementing legislation and in drafting reports thereon.

Bujumbura, 26 December 2001

Appendice

Décret No / du décembre 2001 portant création de la Commission nationale chargée de la lutte contre le terrorisme international

Exposé de motifs

Dans l'esprit de la mise en application de la résolution 1373 (2001) du 28 septembre 2001 et suite à la décision du Conseil des Ministres de mettre sur pied une Commission Nationale chargée de la lutte contre le terrorisme international dont le Ministre de l'Intérieur et de la Sécurité Publique a été désigné comme Président, il est apparu nécessaire et urgent de créer cette commission.

Le présent projet de Décret a donc pour objet de mettre sur pied ladite commisaion et de préciser les missions qui lui sont assignées et qui se résument comme suit :

- Suivre, examiner, enquêter sur les actes de terrorisme ;
- Formuler des propositions d'adaptation de la législation nationale aux traités internationaux contre le terrorisme et s'assurer de leur mise en application ;
- Assurer la mise en application des résolutions de l'Assemblée Générale des Nations Unies et du Conseil de Sécurité sur le terrorisme ;
- Elaborer le rapport du Gouvernement sur la mise en application de ces résolutions.

Il est urgent que cette Commission soit mise sur pied car elle doit s'atteler sans plus tarder à préparer le premier rapport de mise en application par le Gouvernement de la Résolution 1373 (2001) qui doit être soumis au Comité du Conseil de Sécurité avant le 27 décembre 2001. La Commission est à composition multisectorielle.

Fait à Bujumbura, le 20 décembre 2001.

DECRET N° / DU /12/2001 PORTANT CREATION D'UNE COMMISSION NATIONALE DE LUTTE CONTRE LE TERRORISME INTERNATIONAL

LE PRESIDENT DE LA REPUBLIQUE,

Vu la Constitution de Transition de la République du Burundi ;

Vu la loi n° 1/017 du 1er Décembre 2000 portant adoption de l'Accord d'Arusha pour la Paix et la Réconciliation au Burundi ;

Vu le Décret n°...../ du...../12/2001 portant interdiction du financement du terrorisme et de la facilitation des actes de terrorisme international ;

Sur proposition du Ministre de l'Intérieur et de la Sécurité Publique ;

Après délibération du Conseil des Ministres ;

DECRETE :

Article 1

Il est créé une Commission Nationale de lutte contre le terrorisme international ci-après dénommée « la Commission ».

Article 2

La Commission est chargée des missions ci-après :

- Suivre et examiner tous renseignements, informations en rapport avec les actes de terrorisme international ;
- Enquêter sur tous les cas de financements des actes terroristes, de recrutements de groupes terroristes, d'approvisionnement en armes des terroristes ;
- Communiquer au Ministère Public des informations relatives aux actes terroristes ;
- Formuler des propositions d'adaptation de la législation nationale aux normes internationales relatives aux mécanismes visant à lutter contre le terrorisme international ;
- Assurer la mise en application des résolutions de l'Assemblée Générale des Nations Unies et du Conseil de sécurité relatives à la lutte contre le terrorisme international ;
- Etablir un rapport annuel sur les mécanismes prises par le Gouvernement contre le terrorisme international ;
- Constituer une banque de données sur les actes de terrorisme, les individus, les entités et les réseaux de terrorisme.

Article 3.

La Commission est composée des membres provenant des différents Ministères et organes gouvernementaux. Ces derniers sont nommés par Arrêté du Vice-Président de la République sur proposition du Ministre de l'Intérieur et de la Sécurité Publique.

Article 4

La Commission élabore son règlement d'ordre intérieur.

Article 5

Les moyens de fonctionnement de la Commission sont pourvus par le Gouvernement.

Article 6

Le Ministre de l'Intérieur et de la Sécurité Publique est chargé de l'exécution du présent Décret qui entre en vigueur le jour de sa signature.

Fait à Bujumbura, le / /2001.

Pierre BUYOYA.

PAR LE PRESIDENT DE LA REPUBLIQUE :

LE VICE-PRESIDENT

Domitien NDAYIZEYE.

LE MINISTERE DE L'INTERIEUR
ET DE LA SECURITE PUBLIQUE

Salvator NTIHABOSE.

VU ET SCELLE DU SCEAU DE LA REPUBLIQUE,
LE MINISTRE DE LA JUSTICE ET GARDE DES SCEAUX,

FULGENCE DWIMA-BAKANA.

DECRET N°.....DU .....DECEMBRE 2001 PORTANT INTERDICTION DU FINANCEMENT DU TERRORISME ET DE LA FACILITATION DES ACTES DE TERRORISME INTERNATIONAL.

EXPOSE DES MOTIFS.

Suite aux attaques du 11 septembre 2001 à New York, à Washington et en Pennsylvanie, le Conseil de Sécurité des Nations Unies a voté la résolution 1373 (2001) en date du 28 septembre 2001 pour prévenir et réprimer le financement des actes de terrorisme.

Cette résolution demande à tous les Etats, notamment :

- de s'abstenir d'apporter quelque forme d'appui aux entités ou personnes impliquées dans les actes de terrorisme, notamment en réprimant le recrutement de membres de groupes terroristes et en mettant fin à l'approvisionnement en armes des terroristes ;

- de prendre des mesures pour :

  - empêcher que des actes de terrorisme soient commis ;
  - refuser asile à des terroristes ;
  - empêcher que leurs territoires soient utilisés à des fins terroristes ;
  - traduire en justice toute personne qui prend part à ces actes ;
  - se prêter assistance avec les autres pays dans les enquêtes criminelles et autres procédures ;
  - échanger des informations opérationnelles et renseignements ;
  - coopérer dans le cadre des accords bilatéraux et multilatéraux afin de prévenir et réprimer les actes de terrorisme ;
  - signer et ratifier les conventions relatives au terrorisme ; et particulièrement
  - prendre des mesures administratives, réglementaires et législatives pour prévenir et réprimer les actes de terrorisme.

Le présent projet de Décret portant interdiction du financement du terrorisme et de la facilitation des actes terroristes vise (en attendant l'adoption d'une loi appropriée dont le processus constitutionnel est habituellement très long) à mettre en application la résolution 1373 (2001) ci-dessus.

Il y a un impératif que ce décret soit signé et promulgué avant le 27 décembre 2001, date à laquelle la résolution 1373 (2001) oblige les Etats à faire rapport au Comité du Conseil de Sécurité contre le terrorisme sur les mesures prises pour appliquer ladite résolution, y compris les mesures administratives, réglementaires et législatives.

Le Gouvernement dans son rapport qu'il doit présenter au comité du conseil avant le 27 décembre 2001 doit donc indiquer qu'il a déjà promulgué un décret pour la prévention et la répression des actes de terrorisme.

C'est dans cet esprit que le projet de Décret a été préparé et devrait retenir l'attention du Gouvernement quant à l'urgence de sa promulgation.

Le projet de Décret donne la définition des actes terroristes tels que définis dans les instruments juridiques internationaux que le Burundi a signé, notamment la Convention de l'OUA sur la prévention et la lutte contre le terrorisme (signée par le Burundi le 14/07/1999) et la Convention internationale pour la répression du financement du terrorisme (signée par le Burundi le 13/11/2001).

Le projet de Décret érige en infraction le financement du terrorisme et la participation à des actes de terrorisme, punissables de peines pouvant aller jusqu'à l'emprisonnement à perpétuité.

La peine de mort n'a pas été retenue à dessein car le présent projet de Décret une fois promulgué, devra être transmis au Comité du Conseil de Sécurité, un organe de la communauté internationale où la peine de mort n'est pas accepté.

Le projet de Décret est sans préjudice au Décret-Loi portant Réforme du Code Pénal du Burundi, qui reste d'application.

Fait à Bujumbura, le 20 décembre 2001.

DECRET N°...../.....DU ...../12/2001 PORTANT INTERDICTION DU FINANCEMENT DU TERRORISME ET DE LA FACILITATION DES ACTES DE TERRORISME INTERNATIONAL.

Le Président de la République,

Vu la Constitution de Transition de la République du Burundi ;

Vu la loi n°1/017 du 1er décembre 200 portant adoption de l'Accord d'Arusha pour la paix et la réconciliation au Burundi ;

Vu le Décret-Loi n°1/86 du 04 avril 1981 portant Réforme du Code Pénal de la République du Burundi ;

Vu la loi n°1/015 du 20 juillet 1999 portant Réforme du Code de Procédure Pénale de la République du Burundi ;

Vu la Loi n°1/004 du 14 janvier 1987 portant Code de l'Organisation et de la Compétence Judiciaire de la République du Burundi ;

Après délibération du Conseil des Ministres,

DECRETE :

Article premier :

Aux fins du présent Décret :

L'expression « acte terroriste » désigne :

a) tout acte ou menace d'acte en violation de la loi susceptible de mettre en danger la vie, l'intégrité physique, les libertés d'une personne ou d'un groupe de personnes, qui occasionne ou peut occasionner des dommages aux biens privés ou publics, aux ressources naturelles, à l'environnement ou au patrimoine culturel, et commis dans l'intention :

(i) d'intimider, provoquer une situation de terreur, forcer, exercer des pressions ou amener tout Gouvernement, organisme, institution, population ou groupe de celle-ci, à engager toute initiative ou à s'en abstenir, à adopter, à renoncer à une position particulière ou à agir selon certains principes ; ou

(ii) de perturber le fonctionnement normal des services publics, la prestation de services essentiels aux populations ou de créer une situation de crise au sein des populations ; ou

(iii) de créer une insurrection générale dans un Etat.

b) toute promotion, financement, contribution, ordre, aide, incitation, encouragement, tentative, menace, conspiration, organisation ou équipement de toute personne avec l'intention de commettre tout acte mentionné au paragraphe a(i) à (iii) ; et

c) un acte qui constitue une infraction au regard et selon la définition donnée dans les traités relatifs au terrorisme;

d) tout autre acte destiné à tuer ou blesser grièvement un civil, ou toute autre personne qui ne participe pas directement aux hostilités dans une situation de conflit armé, lorsque, par sa nature ou son contexte, cet acte vise à intimider une population ou à contraindre un gouvernement ou une organisation internationale à accomplir ou à s'abstenir d'accomplir un acte quelconque.

Les considérations d'ordre politique, philosophique, idéologique, racial, ethnique, religieux ou autres ne peuvent justifier les actes terroristes visés ci-dessus.

Article 2

Sans préjudice des dispositions du Code Pénal, sera puni d'une peine d'emprisonnement à perpétuité quiconque se sera mis à la tête des bandes terroristes ou y aura exercé une fonction ou un commandement quelconque.

Les individus faisant partie des bandes visées à l'alinéa précédent sans y exercer aucun commandement ni emploi, seront punis d'une servitude pénale de 15 à 20 ans.

Quiconque, agissant intentionnellement, met à disposition, collecte ou obtient autrement des fonds ou autres avoirs financiers dans l'intention que ceux-ci soient utilisés ou sachant qu'ils seront en tout ou en partie utilisés en vue de préparer ou de perpétrer un acte de terrorisme sera également puni d'une servitude pénale à perpétuité .

Ces actes constituent également une infraction pénale en République du Burundi lorsqu'ils sont commis à l'étranger par un ressortissant burundais ou par un étranger qui réside régulièrement au Burundi.

Article 3

Sans préjudice des dispositions du Code Pénal, encourt une peine d'emprisonnement à vie quiconque met intentionnellement des fonds, avoirs ou services financiers à la disposition de l'une quelconque des personnes ou entités ci-après :

a) toute personne qui pour des raisons valables peut être soupçonnée de préparer ou de perpétrer une infraction visée aux articles premier ou 2 ;

b) toute entité appartenant au suspect ou sur laquelle celui-ci exerce une influence non négligeable ; ou

c) toute personne ou entité agissant au nom ou sur instruction du suspect ou de l'entité visée à l'alinéa b).

Le paragraphe 2 de l'article 2 s'applique mutatis mutandis.

Article 4

Lorsque pour des raisons valables, une personne est soupçonnée de préparer ou de perpétrer un acte visé aux articles premier ou 2, le Ministère Public prend les mesures requises en vue de geler sans retard tous biens, comptes, fonds, avoirs et titres appartenant :

a. au suspect ;

b. à toute entité appartenant au suspect ou sur laquelle celui-ci exerce une influence non négligeable ; ou

c. à toute personne ou entité agissant au nom ou sur instruction du suspect ou de l'entité visée à l'alinéa b)

Toute institution financière qui soupçonne qu'une transaction est liée à un acte visé aux articles premier ou 2, transmet d'office toutes informations de nature à dénoncer cette infraction au Ministère Public. L'institution financière doit, à la requête du Ministère Public, fournir toutes informations utiles concernant l'infraction présumée. Elle n'informe aucun client ni tiers que ces informations ont été transmises. L'obligation de discrétion s'impose également aux responsables de l'institution financière.

Article 5

Sans Préjudice des dispositions du Code Pénal, quiconque, intentionnellement et en connaissance de cause, facilite, promeut, aide, donne asile, héberge, recrute, approvisionne en moyens ou en armes, délivre ou contrefait des documents d'identité ou de voyage des individus, groupes, entités ou associations de terroristes, est puni d'une servitude pénale à perpétuité.

Article 6

Toute disposition antérieure qui n'est pas contraire au présent Décret reste d'application.

Article 7

Le Ministre de l'Intérieur et de la Sécurité Publique est chargé de l'exécution du présent Décret qui entre en vigueur le jour de sa signature.

Fait à Bujumbura, le .....décembre 2001.

PIERRE BUYOYA

PAR LE PRESIDENT DE LA REPUBLIQUE

LE VICE-PRESIDENT DE LA REPUBLIQUE

DOMITIEN NDAYIZEYE.

LE MINISTRE DE L'INTERIEUR
ET DE LA SECURITE PUBLIQUE

SALVATOR NTIHABOSE.

VU ET SCELLE DU SCEAU DE LA REPUBLIQUE

LE MINISTRE DE LA JUSTICE
ET GARDE DES SCEAUX

FULGENCE DWIMA-BAKANA.